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cases it was duly recognized.⁷ The opinion of Mr. Justice Shaw, in the case of *Holland v. Hotchkiss*, in which the earlier precedents are carefully considered and analyzed, settles the law in California in accordance with the rules which ought to control in courts of equity.⁸

It would seem, however, that the fact that the taxes have not been paid or tendered to the defendant must appear in some manner from the pleadings. Ordinarily, under the California procedure, a complaint to quiet title discloses nothing whatever concerning the nature of the defendant's right or claim. In such actions, it would, therefore, seem to be clear that the defendant must assert his claim to reimbursement. In the recent case of *Cohen v. Anderson*,⁹ the District Court of Appeal for the Third Appellate District of California, while recognizing the principles enunciated in the *Holland* case refused to apply them, because the defendant's pleading did not show that he had paid out any money which in equity should be repaid to him.

T. A. J. D.

Evidence: Judicial Notice of its Own Records by Court.—The California Supreme Court has clearly established the general rule in this jurisdiction "that the courts cannot in one case take judicial notice of their records in another and different case."¹ A similar rule prevails in the courts of other states² with a few possible exceptions.³ Relying upon these authorities the Supreme Court, on the hearing of *Sewell v. Price*⁴ in department one, held in a suit by a judgment creditor to set aside a fraudulent transfer of property, that the court would not take judicial notice of the fact that it had reversed the original judgment at law upon which the creditor's bill was based.

Shortly afterwards precisely the same question as to judicial notice was presented to department two in another branch of the same litigation (*Sewell v. Johnson*).⁵ Without discussing the decision of the court in department one, the opinion in department two reached an opposite conclusion. The California authorities⁶ cited did

556, 25 Pac. 55, the complaint averred facts, which, if true, showed the assessment to be utterly void.

⁷ *Hibernia S. & L. Soc. v. Ordway*, (1869) 38 Cal. 679; *Ellis v. Witmer*, (1901) 134 Cal. 249, 66 Pac. 301; *Flannigan v. Towle*, (1908) 8 Cal. App. 229, 96 Pac. 507.

⁸ 37 Cyc. 1271, 1273, 1323; 2 Cooley, *Taxation*, 3rd ed., p. 1455; 1 High, *Injunctions*, 4th ed., Sec. 497, 498; 1 Pomeroy, *Equity Jurisprudence*, 3rd ed., Sec. 393; 1 Pomeroy, *Equitable Remedies*, Sec. 357, 364, 376.

⁹ (Aug. 28, 1913) 17 Cal. App. Dec. 225. Modified on Rehearing (Sep. 27, 1913) 17 Cal. App. Dec. 353.

¹ *People v. Dela Guerra*, (1864) 24 Cal. 73; *Lake Merced Water Co. v. Cowles*, (1866) 37 Cal. 214; *McKinley v. Tuttle*, (1872) 42 Cal. 576; *Stanley v. McElrath*, (1890) 86 Cal. 449, 22 Pac. 673, 10 L. R. A. 545; *Ralph v. Hensler*, (1893) 97 Cal. 296 32 Pac. 243.

² 16 Cyc. 918, note 71.

³ *Story v. Ulman*, (1898) 88 Md. 24; 41 Atl. 120.

⁴ (1912 Nov. 30) 164 Cal. 265, 128 Pac. 407.

⁵ (1913 Feb. 25) 45 Cal. Dec. 276.

⁶ *Foss v. Johnstone*, (1910) 158 Cal. 134, 110 Pac. 294; *Davis v. Whid-*

not include *Gay v. Gay*,⁷ where the Supreme Court took judicial notice of the fact that the respondent had obtained a writ of mandate to compel the trial judges to settle the pending bill of exceptions. The court relied upon a liberal construction of the Code of Civil Procedure sec. 1875 and upon the fact that the California court has taken judicial notice of the decisions of the federal courts.

On the hearing in bank of *Sewell v. Johnson*,⁸ the court overruled the decision of department one and held it would take judicial notice of the reversal of the judgment upon which the creditor's bill was based "under the peculiar circumstances" of the particular case. The court, however, did not discuss the decision of department two or adopt its reasoning. The decision was rested largely upon *Ballard v. Searls*⁹ and the federal cases¹⁰ following it. In distinguishing the principal case from those which conform to the general rule that judicial notice will not be taken of the record of another case, the court emphasized the fact that the reversal of the judgment occurred after the pleadings were concluded. There was no opportunity to plead the reversal of the judgment.

If regarded as an enlargement of the general rule as to judicial notice of court records, the principle adopted should be subject to a further limitation. In looking at its own former judgments the court should take judicial notice of only such facts as would not be subject to rebuttal by the opposite party, if he were given warning in the pleadings. *Sewell v. Johnson* is within this limitation, because it is a case where the court record is conclusive that the basis of the complaint is gone.

From another point of view, however, the decision of the principal case does not involve the question of judicial notice.¹¹ The defendant has simply presented evidence to the Appellate Court of a matter outside the record. The point to be considered is "whether such matters as are asserted [in the case under comment] may be brought before the court on motion and supported by evidence outside the record" in disposing of an appeal. If this contention be sound, the discussion of the question in terms of judicial notice only makes for confusion and misunderstanding. This view seemingly has the

den, (1897) 117 Cal. 623, 49 Pac. 766; *Southern Pacific R. R. Co. v. Painter*, (1894) 113 Cal. 247, 45 Pac. 320; *Hollenbach v. Schnabel*, (1894) 101 Cal. 315, 35 Pac. 872; Accord: *Ohm v. City and County of San Francisco*, (1890) 25 Pac. 155, 157, (Cal); protest of Mr. Justice Paterson in *Sharon v. Sharon*, (1889) 79 Cal. 633, 697, 22 Pac. 263; Contra: *Vassault v. Seitz*, (1866) 31 Cal. 225; *Sharon v. Sharon*, supra.

⁷ (1905) 146 Cal. 237, 79 Pac. 885 *Noticing Gay v. Torrance*, (1904) 143 Cal. 169, 76 Pac. 973.

⁸ (1913 July 28) 46 Cal. Dec. 85. The judgment noticed is *Sewell v. Christie and Price*, (1912) 163 Cal. 76, 124 Pac. 713. Accord *Avocato v. Dell Ara*, (1904) 84 S. W. 444 (Texas).

⁹ (1888) 130 U. S. 50, Court noticed *Worden v. Searls*, (1886) 121 U. S. 14.

¹⁰ *Butler v. Eaton*, (1890) 141 U. S. 240, 247; *Hennessy v. Tacoma Smelting Co.*, (1904) 129 Fed. 40.

¹¹ Concurring opinion of Mr. Justice Angellotti in principal case.

support of *Ballard v. Searls*. In that case the facts were essentially the same as those of *Sewell v. Johnson*. Without discussing the question of judicial notice, the court took into account the fact that there was no longer a judgment to support the creditor's bill and remanded the case to the Circuit Court for relief appropriate to the new state of facts. The cases cited by counsel were directed to the point that the court should dismiss a moot question.¹² In the federal cases following *Ballard v. Searls*, however, the court definitely said it was taking judicial notice of the reversal of the original judgment, when the reversal occurred pending an appeal.

If the authority of federal precedents is accepted for a modification of the general rule as to judicial notice, it is to be noted that the federal rule apparently differs from that of California. Although judicial notice will not be taken of the records of other federal courts¹³ nor of the courts of the state in which they exercise jurisdiction,¹⁴ judicial notice may be taken of their own records in other cases.¹⁵

Whether characterized as judicial notice or not, the principle adopted by the court in the principal case may well be applied in cases where there is no opportunity to plead the judgment and the facts noticed in the judgment are not subject to rebuttal. It is only reasonable that the court avoid cumbersome procedure, if not the doing of an injustice, by an immediate recognition of the fact that the case before it is no longer entitled to consideration. But the enlargement of the rule should be kept strictly within the limits suggested by the principal case.¹⁶

C. S. J.

Exemptions: Dissolution of Liens on Exempt Property by Bankruptcy.—The Supreme Court of the United States has recently decided, in the case of *Chicago, Burlington & Quincy Rd. Co. v. Hall*,¹ that section 67f of the Bankruptcy Act has the effect of dissolving a lien obtained through legal proceedings within the four months' period, even on property which is set apart to the bankrupt as exempt under other provisions of the Act.

In this case it appeared that the bankrupt, a resident of Nebraska, had been sued in Iowa, and his wages attached. Under the Nebraska

¹² *Dakota County v. Glidden*, (1884) 113 U. S. 222 (compromise); *Smith v. U. S.*, (1876) 94 U. S. 97 (The defendant had escaped); *San Mateo County v. S. P. Ry.*, (1885) 116 U. S. 141 (Compromise); *Cheong Ah Moy v. U. S.*, (1884) 113 U. S. 216 (Habeas corpus for person already deported).

¹³ 16 Cyc 919.

¹⁴ 16 Cyc 920.

¹⁵ *In re Osborn*, (1902) 115 Fed. 1; *Cushman Paper Box Mach. Co. v. Goddard*, (1899) 95 Fed. 664; *Pitkins v. Cowen*, (1899) 91 Fed. 199; *Pittel v. Fidelity Ins. Co.*, (1898) 86 Fed. 225; *In re Durrant*, (1898) 84 Fed. 314; *Louisville Trust Co. v. Cincinnati*, (1896) 76 Fed. 296, 318; *The Minna*, (1863) 17 Fed. Cases No. 9634; *In re Boardman*, (1897) 169 U. S. 39.

¹⁶ *Wigmore on Evid.* sec. 2565, sec 2579; *People v. Lichtenstein*, (Aug. 27, 1913) 17 Cal. App. Dec. 187, 203.

¹ 33 Sup. Ct. Rep. 885. (Decided June 9, 1913.)